

REMARKS

This Amendment is submitted in response to the non-final Office Action mailed on January 15, 2008. No fee is due in connection with this Amendment. The Director is authorized to charge any fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 115808-491 on the account statement.

Claims 10-37 are pending in this application. Claims 1-9 were previously canceled without prejudice or disclaimer, and Claims 25-37 were previously withdrawn. In the Office Action, Claim 24 is objected to. Claims 10-24 are rejected under 35 U.S.C. §112. Claims 10-17, 19-21 and 23-24 are also rejected under 35 U.S.C. §102. Claims 18 and 22 are rejected under 35 U.S.C. §103. In response, Claims 10-14, 16 and 18-24 have been amended and Claims 15 and 17 have been canceled. These amendments do not add new matter. In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully submit that the objections and rejections should be withdrawn.

Applicants respectfully note that the specification as originally filed contained ten claims, not nine. However, since all claims in the original specification were withdrawn from consideration, Applicants respectfully submit that the cancellation of Claims 1-9 without prejudice or disclaimer effectively canceled all originally filed Claims 1-10.

In the Office Action, Claim 24 is objected to for failing to recite a product claim and instead reciting a step applied to the product. See, Office Action, page 2, lines 15-18. In response, Applicants respectfully submit that currently amended Claim 24 is proper. "A product-by-process claim, which is a product claim that defines the claimed product in terms of the process by which it is made, is proper," and such a claim is not objectionable if it is clear that the claim is drawn to the product rather than the process. MPEP §2173.05(p) (2008). Claim 24 recites, in part, a food composition. . . wherein the composition is cooked by a system selected from the group consisting of a hot air system, a steam system, a combined hot air and steam system, a microwave system. Thus, it is clear that Claim 24 is drawn to a product, rather than a process. As such, Applicants respectfully request that the objection be reconsidered and withdrawn.

In the Office Action, Claims 15 and 21 are rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description and enablement requirements. With respect to Claim 15, the Examiner alleges that the Specification does not

describe using a blood source but rather using blood as a source of protein. See, Office Action, page 3, lines 8-10. In response, Applicants have canceled Claim 15 and have added the limitations of Claim 15 to independent Claim 10. Claim 10 has been amended to recite, in part, a food composition wherein the source of proteins is selected from the group consisting of a plasma, a gluten, a blood, and combinations thereof. The amendment does not add new matter. The amendment is supported in the Specification, for example, at page 5, lines 6-8. Applicants respectfully submit that the objectionable language of “a blood source” has been replaced with “a blood” and, thus, complies with the written description requirement.

With respect to Claim 21, the Examiner alleges that the specification does not provide support for using both a plant texturing protein and an animal texturing protein in the emulsion mixture. See, Office Action, page 3, lines 14-18. In response, Applicants respectfully submit that the Specification indicates to one of ordinary skill in the art that either one or both of a textured plant protein and a textured animal protein may be included in the emulsion mixture. For example, the Specification states in each of Examples 1, 2 and 3 that the emulsion is prepared using “1.5% of plant or animal texturing proteins.” See, Specification, page 8, lines 12-16; page 9, lines 11-15 and 33-37. For clarification purposes, Claim 21 has been amended to recite, in part, an emulsion that comprises a mixture of: a meat, a cereal, a textured plant protein, a textured animal protein, water, vitamins, salt, a flavoring and a colorant. The amendment does not add new matter. The amendment is supported in the Specification, for example, at page 8, lines 12-16; page 9, lines 11-15 and 33-37. Thus, plant and animal texturing proteins will hereafter be referred to as textured plant proteins and textured animal proteins, respectively. Applicants respectfully submit that one of ordinary skill in the art would understand that 1.5% of textured plant or animal proteins includes textured plant proteins, textured animal proteins, or a mixture of the two, as long as the total percentage of textured proteins is, for example, 1.5% as demonstrated in Examples 1, 2 and 3. Therefore, the Specification provides adequate support for Claim 21 as currently amended.

Accordingly, Applicants respectfully request that the rejection of Claims 15 and 21 under 35 U.S.C. §112, first paragraph, be withdrawn.

In the Office Action, Claims 10-24 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. With respect to Claim 11, the Examiner asserts that there is insufficient antecedent basis for the claimed limitation of “the water content.” See, Office Action, page 4, lines 4-6. In response, Applicants have amended Claim 11 to recite, in part, a

food composition wherein the coating contains from about 30% to about 50% by weight of water. The amendment does not add new matter. The amendment is supported in the Specification, for example, at page 4, lines 7-18; page 5, lines 1-4. Applicants respectfully submit that currently amended Claims 11 has sufficient antecedent basis.

With respect to Claims 11 and 17, the Examiner alleges that the claim term “similar” renders the claims indefinite. See, Office Action, page 4, lines 7-8. In response, Applicants have amended Claim 11 and canceled Claim 17. As discussed previously, Claim 11 has been amended to replace the language “similar to that of the product coated” with a range of 30% to 50% by weight of the coating. Applicants respectfully submit that currently amended Claim 11 is not indefinite and, thus, complies with 35 U.S.C. §112, second paragraph.

With respect to Claim 15, the Examiner asserts that the limitation “a blood source” is indefinite. See, Office Action, page 4, lines 12-13. As previously discussed, Applicants have canceled Claim 15. Furthermore, the previous limitation “a blood source” that was added to Claim 10 has been amended for clarification purposes to recite, in part, a food composition “wherein the source of proteins is selected from the group consisting of a plasma, a gluten, a blood, and combinations thereof. Therefore, Applicants respectfully submit that the rejection with respect to Claim 15 be withdrawn.

With respect to Claim 18, the Examiner alleges that it is unclear whether the product coated consists of “a mixture of meat,” “a meat by-product,” etc., or a mixture of “a meat, a meat by-product, etc.” In response, Applicants have amended Claim 18 for clarification purposes to recite, in part, a mixture of: a meat, a meat by-product, a fish and a fish by-product. The amendment does not add new matter. The amendment is supported in the Specification, for example, at page 6, lines 26-28. As currently amended, Claim 18 clearly recites a mixture of “a meat,” “a meat by-product,” etc. Thus, Applicants respectfully submit that currently amended Claim 18 is not indefinite and complies with 35 U.S.C. §112, second paragraph.

With respect to Claims 18, 21 and 22, the Examiner states that “[t]he limitation ‘and a combination thereof’ appears to be redundant, since the mixture is a combination thereof.” See, Office Action, page 5, lines 3-4. In response, Applicants have amended Claims 18, 21 and 22 to remove the language “and a claimed combination thereof.” For example, currently amended Claim 18 recites, in part, a food composition wherein the product coated consists of: a mixture of: a meat, a meat by-product, a fish and a fish by-product; a cereal; and water. Currently amended Claim 21 recites, in part, a food composition wherein the emulsion comprises a mixture

of: a meat, a cereal, a textured plant protein, a textured animal protein, water, vitamins, salt, a flavoring and a colorant. Currently amended Claim 22 recites, in part, a food composition wherein the coating comprises a mixture of: a caramelized sugar, a starch, a guar, a carboxymethyl-cellulose, a flour, water, a plasma, a powdered blood, sodium alginate, a salt, a sugar, an ascorbic acid, a gluten and an iron oxide. These amendments do not add new matter. These amendments are supported in the Specification, for example, at page 4, lines 7-18; page 8, lines 12-18 and 23-26; page 9, lines 11-17, 22-26 and 33-38; page 10, lines 1 and 6-10. Applicants respectfully submit that currently amended Claims 18, 21 and 22 are not indefinite and thus comply with 35 U.S.C. §112, second paragraph.

With respect to Claims 16, 21 and 22, the Examiner alleges that the recited language of “comprises. . . and a combination thereof” fails to comply with accepted patent practice regarding Markush claims. See, Office Action, page 5, lines 5-10. In response, Applicants have put Claim 16 in Markush form and respectfully submit that Claims 21 and 22 are not Markush claims and, thus, are not required to comply with accepted practice regarding Markush claims. With respect to Claims 21 and 22, as discussed previously, Claims 21 and 22 have been amended to remove the language “and a combination thereof.” Thus, currently amended Claims 21 and 22 do not contain the language objected to by the Examiner. With respect to Claim 16, Applicants respectfully submit that Claim 16 is a proper Markush claim. For example, Markush claims recite alternatives “in a format such as ‘selected from the group consisting of A, B and C.’” MPEP §803.02 (2008). Claim 16 has been amended to recite, in part, a food composition wherein the coating further comprises a component selected from the group consisting of a thickener, a binder, an additive, flour, water and combinations thereof. Thus, Claim 16 is a proper Markush claim and complies with the requirements of 35 U.S.C. §112, second paragraph.

With respect to Claim 21, the Examiner asserts that it is unclear whether the limitation of “plant texturing protein or animal texturing protein” is a texturing protein derived from a plant or an animal or whether it is a protein merely used to texturize a plant or animal. See, Office Action, page 5, lines 11-14. In response, Applicants have amended Claim 21 to recite, in part, an emulsion that comprises a mixture of: a meat, a cereal, a textured plant protein, a textured animal protein, water, vitamins, salt, a flavoring and a colorant. The amendment does not add new matter. The amendment is supported in the Specification, for example, at page 8, lines 12-16; page 9, lines 11-15 and 33-37. Although the Specification states “1.5% of plant or animal texturing proteins,” one of ordinary skill in the art would understand that plant or animal

texturing proteins are textured proteins derived from a plant or animal, respectively. Thus, currently amended Claim 21 is not vague or indefinite.

The Examiner further asserts that the specification does not provide support for adding both textured plant proteins and textured animal proteins. However, as discussed previously, one of ordinary skill in the art would understand that 1.5% of textured plant or animal proteins includes textured plant proteins, textured animal proteins, or both as long as the total amount of textured proteins is, for example, 1.5% as demonstrated in Examples 1, 2 and 3. Thus, currently amended Claim 21 complies with 35 U.S.C. §112, second paragraph.

With respect to Claims 15 and 22, the Examiner alleges that the limitation “plasma” is indefinite, since there are many types of plasma within the knowledge of the skilled artisan. See, Office Action, page 5, lines 16-18. As discussed previously, Claim 15 has been canceled and the limitation “plasma” has been added to Claim 10. However, Applicants respectfully submit that “a plasma” as recited in currently amended Claims 10 and 22 includes all types of plasma within the knowledge of the skilled artisan. Contrary to the Examiner’s assertion, see, Office Action, page 5, lines 17-18, if one of ordinary skill in the art has knowledge of many types of plasma, such skilled artisan would understand what is meant by “a plasma.” Therefore, the limitation “a plasma” in Claims 10 and 22 is not vague or indefinite.

With respect to Claim 24, the Examiner asserts that there is insufficient antecedent basis for the limitation “said cooking.” See, Office Action, page 5, lines 19-22. A product claim that defines the product in terms of the process by which it is made is not objectionable under 35 U.S.C. §112, second paragraph, if it is clear that the claim is drawn to the product rather than the process. MPEP §2173.05(p) (2008). As discussed previously, Claim 24 is clearly drawn to the food composition product and, as such, is not objectionable under 35 U.S.C. §112, second paragraph. Similarly, the limitation “after cooking” in Claim 10 is a positive limitation in the product claim. As described in the Specification, the food composition must be cooked in order to allow coagulation of the proteins contained in the coating, since coagulation of the proteins is necessary to obtain a roasted appearance on the food composition. See, Specification, page 2, lines 35-38; page 3, lines 1-3. Therefore, cooking the food composition of Claim 10 is a positive product limitation, and Claim 24 has sufficient antecedent basis.

Accordingly, Applicants respectfully request that the rejection of Claims 10-24 under 35 U.S.C. §112, second paragraph, be withdrawn.

In the Office Action, Claims 10-17, 19 and 23-24 are rejected under 35 U.S.C. §102(b) as being anticipated by WO 00/65937 to Prasad et al. ("*Prasad*"). In response, Applicants have amended Claim 10. Currently amended independent Claim 10 recites, in part, a food composition having a coating for obtaining a roasted appearance after cooking wherein the coating comprises at least one of a source of pigments or colorants; and a source of proteins, wherein the source of proteins is selected from the group consisting of a plasma, a gluten, a blood, and combinations thereof. The amendment does not add new matter. The amendment is supported in the Specification, for example, at page 5, lines 6-8. In view of the amendments and for the reasons set for below, Applicants respectfully submit that *Prasad* fails to disclose or suggest every element of the present claims.

For example, *Prasad* fails to disclose or suggest a coating that comprises a source of proteins, wherein the source of proteins is selected from the group consisting of a plasma, a gluten, a blood, and combinations thereof as required, in part, by the present claims. The coating of the present claims provides a roasted appearance to a food composition after cooking. See, Specification, page 2, lines 30-33. When heated during cooking, the proteins in the coating coagulate and thereby create a scattered pattern of color on the surface of the food composition. See, Specification, page 3, lines 1-4. Because of the scattered color pattern thus created, the coating of the present claims more closely imitates cooking in a conventional oven than prior art browning agents, which merely created a uniform coloring on the surface of a food composition. See, Specification, page 2, lines 4-26; page 3, lines 1-4. In contrast, *Prasad* fails to disclose or suggest a coating comprising a source of proteins, wherein the source of proteins is selected from the group consisting of a plasma, a gluten, a blood, and combinations thereof as required, in part, by the present claims.

The Examiner asserts that *Prasad* discloses a coating that contains hydrolyzed wheat gluten. See, Office Action, page 7, lines 21-22; page 8, lines 1-3. However, the portion of *Prasad* relied on by the Examiner does not disclose the use of wheat gluten in its marinade but rather wheat gluten hydrolysate. See, *Prasad*, page 7, lines 29-30. A hydrolysate is the product of hydrolysis. See, Merriam-Webster Online Dictionary entry for "hydrolysate," <http://www.merriam-webster.com/dictionary/hydrolysate>. Hydrolysis is a chemical reaction that splits a chemical bond and adds a hydrogen cation and a hydroxide anion to a compound. See, Merriam-Webster Online Dictionary entry for "hydrolysis," <http://www.merriam-webster.com/dictionary/hydrolysis>. Therefore, a wheat gluten hydrolysate is a wheat gluten

compound that has been chemically altered by splitting a bond of the wheat gluten compound and adding a hydrogen cation and a hydroxide anion. Applicants respectfully submit that such a compound is chemically distinct from wheat gluten. Nowhere does *Prasad* disclose or suggest using a plasma, a gluten, a blood, or combinations thereof as an ingredient in its marinade. Thus, *Prasad* fails to disclose a coating comprising a source of proteins, wherein the source of proteins is selected from the group consisting of a plasma, a gluten, a blood, and combinations thereof as required, in part, by independent Claim 10 and Claims 11-17, 19 and 23-24 that depend therefrom.

Accordingly, Applicants respectfully request that the rejection of Claims 10-17, 19 and 23-24 under 35 U.S.C. §102(b) to *Prasad* be withdrawn.

In the Office Action, Claims 10-11, 16-17 and 19-21 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,567,466 to Dupont-Delhovren ("*Dupont*"). In response, Applicants have amended Claim 10. Currently amended independent Claim 10 recites, in part, a food composition having a coating for obtaining a roasted appearance after cooking wherein the coating comprises at least one of a source of pigments or colorants; and a source of proteins, wherein the source of proteins is selected from the group consisting of a plasma, a gluten, a blood, and combinations thereof. In view of the amendments and for the reasons set forth below, Applicants respectfully submit that *Dupont* fails to disclose or suggest every element of the present claims.

For example, *Dupont* fails to disclose or suggest a coating that comprises a source of proteins, wherein the source of proteins is selected from the group consisting of a plasma, a gluten, a blood, and combinations thereof as required, in part, by the present claims. The only support cited by the Examiner for the claimed limitation of "a source of proteins" is the disclosure of meat in the base or sauce of *Dupont*. See, Office Action, page 9, lines 5-6. Nowhere does *Dupont* disclose or suggest a coating comprising a source of proteins selected from the group consisting of a plasma, a gluten, a blood, and combinations thereof, nor does the Examiner cite support for such limitation. In fact, the Examiner did not include Claim 15 in the rejection of claims under 35 U.S.C. §102(b) to *Dupont*. However, the limitation "wherein the source of proteins is selected from the group consisting of a plasma, a gluten, a blood, and combinations thereof" was previously included in canceled Claim 15. Thus, Applicants respectfully submit that *Dupont* fails to disclose or suggest a coating that comprises a source of proteins, wherein the source of proteins is selected from the group consisting of a plasma, a

gluten, a blood, and combinations thereof as required, in part, by currently amended Claim 10 and Claims 11, 16-17 and 19-21 that depend therefrom.

Accordingly, Applicants respectfully request that the rejection of Claims 10-11, 16-17 and 19-21 under 35 U.S.C. §102(b) to *Dupont* be withdrawn.

In the Office Action, Claims 10-11, 17, 19 and 23-24 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,808,340 to Palmer ("*Palmer*"). In response, Applicants have amended Claim 10. Currently amended independent Claim 10 recites, in part, a food composition having a coating for obtaining a roasted appearance after cooking wherein the coating comprises at least one of a source of pigments or colorants; and a source of proteins, wherein the source of proteins is selected from the group consisting of a plasma, a gluten, a blood, and combinations thereof. In view of the amendments and for the reasons set for below, Applicants respectfully submit that *Palmer* fails to disclose or suggest every element of the present claims.

For example, *Palmer* fails to disclose or suggest a coating that comprises a source of proteins, wherein the source of proteins is selected from the group consisting of a plasma, a gluten, a blood, and combinations thereof as required, in part, by the present claims. The only support cited by the Examiner for the claimed limitation of "a source of proteins" is the disclosure of liver and veal in the coating of *Palmer*. See, Office Action, page 10, lines 7-8. Nowhere does *Palmer* disclose or suggest a coating comprising a source of proteins selected from the group consisting of a plasma, a gluten, a blood, and combinations thereof, nor does the Examiner cite support for such limitation. In fact, the Examiner did not include Claim 15 in the rejection of claims under 35 U.S.C. §102(b) to *Palmer*. However, the limitation "wherein the source of proteins is selected from the group consisting of a plasma, a gluten, a blood, and combinations thereof" was previously included in canceled Claim 15. Thus, Applicants respectfully submit that *Palmer* fails to disclose or suggest a coating that comprises a source of proteins, wherein the source of proteins is selected from the group consisting of a plasma, a gluten, a blood, and combinations thereof as required, in part, by currently amended Claim 10 and Claims 11, 17, 19 and 23-24 that depend therefrom.

Accordingly, Applicants respectfully request that the rejection of Claims 10-11, 17, 19 and 23-24 under 35 U.S.C. §102(b) to *Palmer* be withdrawn.

In the Office Action, Claim 18 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Dupont* in view of U.S. Patent No. 4,781,939 to Martin et al. ("*Martin*"). As discussed

previously, *Dupont* fails to disclose or suggest every element of independent Claim 10. The Examiner relies on *Martin* only for the disclosure of a pork or pork by-product in the emulsion of Claim 18. See, Office Action, page 12, lines 5-18. Thus, Applicants respectfully submit that *Martin* fails to remedy the deficiencies of *Dupont*.

Accordingly, Applicants respectfully request that the rejection of Claim 18 under 35 U.S.C. §103(a) to *Dupont* in view of *Martin* be withdrawn.

In the Office Action, Claim 18 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Prasad* in view of *Martin* and U.S. Patent No. 3,900,573 to Freck et al. ("*Freck*"). As discussed previously, *Prasad* fails to disclose or suggest every element of independent Claim 10. The Examiner relies on *Martin* and *Freck* only for the disclosure of water, cereal, and meat by-products in the emulsion of Claim 18. See, Office Action, page 13, lines 3-20. Thus, Applicants respectfully submit that *Martin* and *Freck* fail to remedy the deficiencies of *Prasad*.

Accordingly, Applicants respectfully request that the rejection of Claim 18 under 35 U.S.C. §103(a) to *Prasad* in view of *Martin* and *Freck* be withdrawn.

In the Office Action, Claim 22 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Palmer* in view of U.S. Patent No. 4,508,741 to Corbett et al. ("*Corbett*"), Dictionary of Food Science and Technology ("*Dictionary*"), Francis, Food Science and Technology, Second Edition volume 1 ("*Francis*"), U.S. Patent No. 3,073,700 to Ziegler ("*Ziegler*"), U.S. Patent No. 4,089,983 to Hood ("*Hood*"), U.S. Patent No. 3,434,843 to Durst ("*Durst*"), Igoe et al., Dictionary of Food Ingredients ("*Igoe*"), U.S. Patent No. 2,567,085 to Stoloff ("*Stoloff*"), and U.S. Patent No. 3,873,736 to Palmer et al. ("*Palmer II*"). As discussed previously, *Palmer* fails to disclose or suggest every element of independent Claim 10. The Examiner relies on the other cited references for the disclosure of the specific ingredients of Claim 22. Thus, Applicants respectfully submit that the cited references fail to remedy the deficiencies of *Palmer* with respect to Claim 22.

Accordingly, Applicants respectfully request that the rejection of Claim 22 under 35 U.S.C. §103(a) to *Palmer* in view of *Corbett*, *Dictionary*, *Francis*, *Ziegler*, *Hood*, *Durst*, *Igoe*, *Stoloff*, and *Palmer II* be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims that could be clarified in a telephonic

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interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

BELL, BOYD & LLOYD LLP

BY 

Robert M. Barrett

Reg. No. 30,142

Customer No.: 29157

Phone No. 312-807-4204

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